



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2019-0411; 9999-30-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is given of a proposed consent decree in *Center for Biological Diversity, et al., v. Wheeler*, No. 4:18-cv-03544 (N.D. Cal.). On June 4, 2018, the Center for Biological Diversity, Center for Environmental Health, and Sierra Club filed a complaint in the United States District Court for the Northern District of California, and filed an amended complaint on December 17, 2018, alleging that the Administrator of the United States Environmental Protection Agency (“EPA”) failed to perform non-discretionary duties to take final action to approve or disapprove, in whole or in part, certain state implementation plans (“SIPs”) submitted to meet attainment requirements under the 2010 primary sulfur dioxide (“SO₂”) national ambient air quality standard (“NAAQS”), and to make findings of failure to submit SIPs for certain areas for the 1971 or 2010 primary SO₂ NAAQS. The proposed consent decree would establish deadlines for EPA to take specified actions.

DATES: Written comments on the proposed consent decree must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2019-0411, online at www.regulations.gov (EPA’s preferred method). For comments submitted at www.regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any

comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mike Thrift, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency, c/o U.S. Environmental Protection Agency San Diego Border Office, 610 W. Ash Street, Suite 905, San Diego, CA, 92101; telephone: (619) 321-1960; email address: thrift.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The consent decree would resolve a lawsuit filed by the Center for Biological Diversity, Center for Environmental Health and Sierra Club seeking to compel the Administrator to take action under the Clean Air Act to approve or disapprove several submitted SO₂ SIPs under CAA sections 110(k)(2)-(4), and to issue findings of failure to submit SO₂ SIPs for several areas under CAA section 110(k)(1)(B). Specifically, the lawsuit seeks to compel EPA action under CAA section 110(k)(2)-(4) on SO₂ SIPs submitted for the Indianapolis, Indiana; Morgan County,

Indiana; Southwest Indiana; Terre Haute, Indiana; Muscatine, Iowa; Detroit, Michigan; Jackson County, Missouri; Lake County, Ohio; Muskingum River, Ohio; Steubenville, Ohio-West Virginia; Rhinelander, Wisconsin; Hayden, Arizona; Miami, Arizona; Jefferson County, Kentucky; Allegheny, Pennsylvania; Beaver, Pennsylvania; Indiana, Pennsylvania; and Marshall, West Virginia SO₂ nonattainment areas. The lawsuit also seeks to compel EPA action under CAA section 110(k)(1)(B) to find failure to submit SO₂ SIPs for the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region; Alton Township, Illinois; Williamson County, Illinois; Anne Arundel County and Baltimore County, Maryland; and St. Clair, Michigan SO₂ nonattainment areas.

The EPA has already taken final action to approve the submitted SO₂ SIPs or elements thereof for the Indianapolis, Indiana; Terre Haute, Indiana; Jackson County, Missouri; Lake County, Ohio; Miami, Arizona; Marshall, West Virginia; and Jefferson County, Kentucky SO₂ nonattainment areas. See, 84 FR 10692 (March 22, 2019), 84 FR 3703 (February 13, 2019); 84 FR 3986 (February 14, 2019); 84 FR 8813 (March 12, 2019); 80 FR 45613 (July 31, 2015); and 84 FR 30920 (June 28, 2019). EPA has also found that SO₂ SIP submitted for the Alton Township, Illinois nonattainment area is complete. See, letter from EPA Region 5 Director of Air and Radiation Division to Director of Illinois Environmental Protection Agency (June 5, 2019). In addition, EPA previously approved some submitted elements for the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region. 61 FR 38591 (July 25, 1996), and 82 FR 44099 (September 21, 2017); see also, letter from Director of New Jersey Department of Environmental Protection, Division of Air Quality to Chief, Air Programs Branch, EPA Region 2 (July 23, 2019). On August 21, 2019, EPA

published a final Clean Data Determination for the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region, concluding that the area had attained the 1971 SO₂ NAAQS and thereby suspending the State's obligation to submit a nonattainment SIP for the area. 84 FR 43504 (August 21, 2019). Therefore, the lawsuit's claims regarding these areas are moot.

Under the terms of the proposed consent decree, EPA shall take actions regarding the remaining areas by the deadlines established in the proposed consent decree, unless EPA or the relevant state takes action that would automatically terminate EPA's obligations for individual areas under the proposed consent decree.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2019-0411) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider late

comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 26, 2019.

Gautam Srinivasan,

Acting Associate General Counsel.

